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Policy Regarding the Return of Seized German Documents

Introduction

1. The United States Government currently holds various categories of German Documents, including books, manuscripts, films and other similar materials, regardless of physical form or characteristic, seized during or after World War II. As used in this paper the word "documents" does not include such interests as literary, artistic, or industrial rights. Many of these materials are held subject to understandings with the British (such as the Bissell-Sinclair agreement) that joint Anglo-American approval will be required for any action taken with regard to disposing of the documents. Consultation will therefore be had with appropriate British authorities in all cases where such an understanding applies. This consultation may relate to the disposal, use, or cost of maintenance, of these materials.

2. Allied rights to seized German documents derive from these sources:

a. Provisions of Article 53 of the Annex to the Hague Convention IV, 1907, which would cover the seizure of materials belonging to the German State seized on or prior to May 8, 1945 (de facto end of Hostilities) and which could have been used for military operations.

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These may be retained as war booty.

b. ACC legislation authorizing the seizure of certain German documents. The chief enactments were: ACC Law #2, October 12, 1945; ACC Directive #18, November 12, 1945; ACC Order #4, May 13, 1945; and ACC Law #34, August 26, 1946. Most of the documents now in Allied control were seized under the provisions of such Allied legislation. These ACC laws, orders, and directives were aimed in the main at the confiscation of National Socialist propaganda materials and military or paramilitary documents pursuant to the policy of withdrawing and withholding such materials from the Germans.

c. ACC Law #5, October 30, 1945, and Allied High Commission Law #63, August 31, 1951, which deprive the former German owners of title to property taken as reparations, and prevent any claim from being asserted with regard to such property.

General Policy

3. It is the announced policy of the United States to promote friendly relations with the Federal Republic of Germany on a normal basis, to bring about effective participation

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participation by the Federal Republic in the European Defense Community on a basis of equality, and to remove unnecessary obstacles to the attainment of these objectives. In view of this policy, the seized German documents will be returned to the Federal Republic, regardless of the legal rights referred to in Section 2, subject only to the qualifications which appear in Section 4 and 5 below. It is understood, however, that this policy regarding the return of documents does not cover property or rights vested, or which were purported to be vested, under the Trading with the Enemy Act.

4. The following categories of materials may be retained:

- (a) Such military, intelligence, cryptographic, technological, or other similar documents, as would, if returned, jeopardize the national security interests of the United States or its Allies.
- (b) Materials concerned primarily with German occupation of other states, the return of which would jeopardize the national security interests of the United States or its Allies. Such materials relating to the occupation of friendly countries may be returned to the respective friendly countries.
- (c) Documents tending to glorify the Nazi regime, or
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which are of inherent propaganda character, or which deal with the organization, personnel, and operation of Nazi Party institutions, except where such transfer would not jeopardize the democratic way of life in the Federal Republic.

5. In appropriate cases, subject to overriding political and military considerations, seized documents which would normally be returned may be retained temporarily for the purposes of official research.

Business or other records involved in enemy property litigation in the United States, or naval records concerned with ship movements or ship refuelling involved in claims litigation against the United States Government, may be retained for the purposes of litigation, pending or threatened, until satisfactory arrangements are made to secure the desired information or evidence from them.

6. All materials which are uniquely a part of the German cultural heritage will, subject to the provisions of paragraphs 4 and 5 preceding, be returned to the Federal Republic of Germany at an early date.

7. The Federal Republic of Germany may be requested to specify categories of materials which it regards as urgently required, and to indicate the priorities according to which

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to which the materials are desired.

8. Representatives of the Federal Republic may be granted access to records which are to be returned, subject to security considerations and in accordance with appropriate administrative arrangements of the respective agencies.

9. Appropriate procedures for the implementation of the above policy will be worked out by the Department of State in consultation with other interested holding agencies.

10. The Department of State will consult with appropriate British authorities on questions relating to access to or disposition of seized German documents or to the cost of maintenance of such records held jointly by the United States and the United Kingdom.

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